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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,298	03/27/2001	Ruth D. Kreichauf	1004.1136102	8636

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EXAMINER	
CONLEY, SEAN E	
ART UNIT	PAPER NUMBER
1744	5

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/822,298	KREICHAUF, RUTH D.	
	Examiner	Art Unit	
	Sean E Conley	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 March 2001, 11 June 2001, 06 May 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *27 March 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *2, 3* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Double Patenting

1. Claims 1-8 of this application conflict with claims 1-8 of Application No. 09/818,383 (Patent Application Publication US 2001/0053667 A1). 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 1-8 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-8 of copending Application No. 09/818,383. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearman et al. (U.S. Pat. 6,217,441 B1) in view of Dosch et al. (U.S. Pat. 5,113,854).

Pearman et al. disclose a method and apparatus for sealing building ductwork during a chemical or biological attack. The system prevents the building HVAC system from delivering the chemical or biological agent throughout the building (see figure 1 and column 1, line 50 to column 2, line 50). However, the reference fails to provide an oxygen source as well as a carbon dioxide scrubber in the rooms that have been sealed off from the air supply ducts.

Dosch et al. disclose a quick-donning protective hood assembly. The hood assembly includes a gaseous oxygen generator (22), which provides the user with respiratory protection from smoke and noxious gaseous. The assembly also includes a

scrubber canister (20), which removes the user's exhaled carbon dioxide. The scrubber canister is carried by the hood (12) and the oxygen generator is carried by the bib (18). The canister and generator are interconnected by an oxygen supply line (24) (see figure 6 and column 3,lines 5-46). The oxygen generator generates the oxygen chemically (see abstract and column 4, lines 30-35).

Therefore, it would have been obvious to one of ordinary level of skill in the art at the time the invention was made to modify the invention of Pearman et al. to include an oxygen generating means as taught by the quick-donning protective hood assembly of Dosch et al. in order to supply an individual with clean oxygen when the buildings ventilation ducts are sealed as a result of a biological or chemical attack.

7. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearman et al. in view of Dosch et al. as applied to claim 1 above, and further in view of Mulcahy (U.S. Pat. 4,901,715).

Pearman et al. and Dosch et al. fail to disclose or suggest an oxygen generator that includes an exhaust tube which has a terminal free end outside of the room.

Mulcahy discloses an apparatus for establishing gaseous communication between a room of a building, wherein the room contains a toilet bowl, and a building conduit disposed within the building. The building conduit is in gaseous communication with the atmospheric gases outside of the building. The toilet bowl has a water level forming a water trap and the toilet bowl includes a flexible water-impermeable, tubular member inserted completely through the water trap so that a first end of the flexible

tubular member is disposed on a building conduit side of the water trap and a second end of the flexible tubular member is disposed on a room side of the water trap (see figures and column 2, line 38-column 3, line 26). Additionally, it is shown in figure 5 that the user end of the apparatus inside the room may be a breathing mask (94).

Therefore, it would have been obvious to one having one of ordinary skill in the art at the time the invention was made to further modify the invention of Pearman et al. and add and exhaust tube (96) that extends from the exhaust valve of the quick-donning hood assembly to a building conduit via a water trap as taught by Mulcahy in order to exhaust the unused oxygen from the user's atmosphere.

8. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearman et al. in view of Dosch et al. as applied to claim 1 above and further in view of the applicant's admitted state of the prior art.

Pearman et al. and Dosch et al. do not disclose or suggest an oxygen source that is chemical oxygen wherein the chemical source includes a chemical compound which generates oxygen in the presence of water. Also, they do not disclose or suggest a chemical air revitalization compound such as potassium superperoxide that serves as both the oxygen source and the carbon dioxide scrubber.

Regarding claim 5, the applicant discloses on page 7, lines 19-23, that it is well known to those skilled in the art to chemically produce oxygen.

Regarding claim 6, the applicant discloses on page 8, lines 6-16, that water based chemical generators for generating oxygen are well known to those skilled in the art.

Regarding claims 7 and 8, the applicant discloses on page 10, lines 18-22, that it is well known to use an air revitalization compound such as potassium superperoxide in order to remove carbon dioxide and generate oxygen.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the invention of Pearman et al. and replace the chemical oxygen generating means with a functionally equivalent oxygen source such as a chemical oxygen source or an air revitalization compound which are admitted by the applicant as being well known to those skilled in the art.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. 6,293,861 B1 to Berry

U.S. Pat. 4,783,045 to Tartaglino

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean Conley, whose telephone number is (703) 305-2430. The examiner can normally be reached on Monday-Friday 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Robert Warden, can be reached at (703) 308-2920. The Unofficial fax phone number for this group is (703) 305-7719. The Official fax phone number for this Group is (703) 872-9310.

When filing a FAX in Technology Center 1700, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communications with the PTO that are not for entry into the file of the application. This will expedite the processing of your papers.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [robert.warden@uspto.gov]. All Internet e-mail communications will be made of record in the application file. PTO employees will not communicate with applicant via internet e-mail where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified unless there is of record express waiver of the confidentiality requirements under 35 U.S.C. 122 by the applicant. See the Interim Internet Usage Policy published by the Patent and Trademark Office Official Gazette on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist, whose telephone number is (703) 308-0661.

SEC Ae

July 30, 2003

Robert J. Warden, Sr.

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